IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/11/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE C. NAGAPPAN

W.P.No.13294 OF 2000

S. Shanmughavadivel
S/o. M.D. Subramaniam .. Petitioner

-Vs-

1. The Director of School Education,
College Road, Chennai 6.

2. The District Educational Officer,
Chennai East, Chennai 2.

3. The Secretary,
Sir Theagaraya Higher Secondary
School Committee,
Old Washermenpet, Chennai 21. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.M. Dhandapani

For Respondents 1-2 : Mr.K. Mahendran
Special Govt. Pleader

:O R D E R

(The order of the Court was made by P.K. MISRA, J)

Heard Mr. Dhandapani for the petitioner and Mr.K. Mahendran, Special Government Pleader for the Respondents 1 and 2.

2. The present writ petition has been filed with a prayer to issue writ of certiorarified mandamus for quashing the impugned order dated 30.3.2000 passed by the second respondent and for a further direction to the respondents to approve the appointment of the petitioner as a Secondary Grade Assistant in the third respondent school.

3. The petitioner was appointed as a Secondary Grade Assistant by the third respondent, which is an aided school. Under the impugned proceedings, the second respondent has refused to grant approval mainly on the basis that selection was made without notifying the vacancy to the employment exchange.

4. Learned counsel for the petitioner has contended that it is open to the School to seek candidates from open market and it is not mandatory to notify the vacancy to the employment exchange. Learned counsel for the petitioner has placed reliance upon a Division Bench decision of this Court reported in 2003 Writ.L.R 31 (NEHRU MEMORIAL COLLEGE,PUTHANAMPATTI BY ITS SECRETARY v. THE STATE OF TAMIL NADU AND 4 OTHERS) and has submitted that selection can be made from the open market.

5. We have carefully gone through the aforesaid Division Bench decision. In paragraph 24 of the said decision, it was laid down as under :-
"24. From the above analysis, the following conclusions would emerge. The State Government is empowered to issue instructions in the capacity of funding authority to the private colleges and the schools receiving grants and such instructions cannot override the provisions of the Act and the Rules. It is mandatory on the part of the educational institutions receiving grants to notify the vacancies to the respective employment exchanges. The educational institutions are also empowered to call for the applications from other modes like newspaper publication, advertisement, media, calling for applications and select the best of the candidates from among them without there being any preference to the candidates sponsored by the Employment Exchange."

6. The aforesaid conclusion of the Division Bench to some extent supports the contention of the petitioner to the effect that it is not always obligatory to confine the selection process by seeking candidates from the employment exchange only. However, the observations made in paragraph 24 of the aforesaid decision make it clear that the school receiving grant is required to notify the vacancies to the respective employment exchanges and in addition to the aforesaid method, the school authority is also empowered to call for applications from open market and thereafter consider all the applications and select the best of the candidates from among them.

7. In the present case, the second respondent has refused to grant approval because the third respondent-School had not notified the vacancy to the Employment Exchange. Therefore, the prayer in the writ petition for quashing the impugned order cannot be accepted. However, it is made clear that while the School management is required to notify the vacancy to the employment exchange, it is also open to the School management to seek for applications from open market and thereafter, the selection can be made from any of the candidates including the candidates from open market. It is further made clear that it would be open to the present petitioner to apply for the very same post if and when the School management takes steps to notify the vacancy to the employment exchange and calls for applications from the open market.

8. Learned counsel for the petitioner has further submitted that since the matter had remained pending in the High Court for a long period, the petitioner might become over-aged by the time when fresh steps are taken by the School management. It is made clear that that so far as the petitioner is concerned, the age bar shall not stand on the way for considering the question of selection by the very same school.

9. Learned counsel for the petitioner has further submitted that since the petitioner has worked, the salary should be paid. It goes without saying that if the salary has not been paid to the petitioner for the period he has worked, the same should be paid by the third respondent as expeditiously as possible.

10. Subject to the aforesaid observations, the writ petition is disposed of. No costs.

Index : Yes
Internet: Yes
dpk

To

1. The Director of School Education,
College Road, Chennai 6.

2. The District Educational Officer,
Chennai East, Chennai 2.